

REPEAL OF LEA ACT

SEPTEMBER 24, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. STAGGERS, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany H.R. 4892]

[Including cost estimate of the Congressional Budget Office]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H.R. 4892) to repeal section 506 of the Communications Act of 1934, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That title V of the Communications Act of 1934 (47 U.S.C. 501 et seq.) is amended by striking out section 506, and by redesignating section 507 through section 509 as section 506 through section 508, respectively.

SEC. 2. (a) Section 317(b) of the Communications Act of 1934 (47 U.S.C. 317(b)) is amended by striking out "section 508" and inserting in lieu thereof "section 507".

(b) Section 503(b) of the Communications Act of 1934 (47 U.S.C. 503(b)) is amended—

(1) by striking out "509(a)" and inserting in lieu thereof "508(a)"; and

(2) by striking out "section 507" and inserting in lieu thereof "section 506".

(c) Section 504(b) of the Communications Act of 1934 (47 U.S.C. 504(b)) is amended by striking out "507" and inserting in lieu thereof "506".

PURPOSE AND SUMMARY OF THE BILL

H.R. 4892, as reported from this Committee, would repeal outdated anti-labor language in the Communications Act of 1934.

BACKGROUND AND NEED FOR LEGISLATION

The Lea Act (section 506 of the Communications Act of 1934) made it unlawful by the use of force, violence, intimidation or duress, or

by the use of other means to coerce, compel or constrain an FCC licensee (radio or TV stations mainly) to employ or agree to employ any person in excess of the number of employees needed to perform actual services; to pay for preparing or using recordings in broadcasts; or to accede to any restriction in the use of recordings or programs in the production of broadcasts.

The intent of the prohibition was to prevent a union, by picketing or striking or by other conduct, from coercing a station to hire unnecessary personnel (featherbedding) and the extortion of money by a union from a station that broadcasts recorded, as opposed to live, music.

The Lea Act was adopted in 1946 primarily to counter the notorious activities of James C. Petrilo, one-time President of the American Federation of Musicians. (House Report No. 1508, 79th Congress, 2d Session, pp. 2-5).

Since the passage of the Act, the Commission has found no record of any actions taken by it pursuant to this section. The Commission reported that there have been criminal investigations by the Justice Department, but prosecution has been denied in each case in the last five years. (In a letter from Robert R. Bruce, FCC General Counsel, October 30, 1979.)

In legislation adopted after the Lea Act, labor activity seeking to create featherbedding was declared unlawful as an unfair labor practice. (Labor Management Relations Act (Taft-Hartley Act), 29 U.S.C. Section 158(b)(6).) Extortion is now prohibited by the Hobbs Act and other anti-racketeering statutes.

Activity that is lawful under the Taft-Hartley Act, if the employer is not an FCC licensee, is criminal under the Lea Act, if the employer is an FCC licensee. (*NLRB v. Gemble Enterprises, Inc.*, 345 U.S. 117 (1953). [Musicians union insisted that theater employ local musicians in addition to the members of a touring band, when such a band came to play. Because of the theater's refusal to agree, the touring band (composed of union members) cancelled scheduled show. Held, no unfair labor practice.]

In industries other than broadcasting, an aggrieved employer can complain to the NLRB and obtain a cease and desist order; contempt of the order is punishable by a fine and/or imprisonment (29 U.S.C. Section 162).

Nothing in the Taft-Hartley Act purports to limit or impede the right to strike (29 U.S.C. Section 163). However, picketing of an FCC licensee's place of business by the musician's union was held a violation of the Lea Act. [*General Teleradio, Inc. v. Manuti*, 133 N.Y.S. 2d 362 (1954).]

Throughout the broadcasting industry, a great deal of the music is "programmed" by nationwide specialists. In some localities, local musicians have found radio and TV stations were afraid or have refused to negotiate with them about the broadcast of their performances because of the Lea Act. As a consequence, local performers' careers are stultified and the music business continues to be concentrated in Hollywood, Nashville and New York.

The Lea Act appears to be inconsistent with national labor policy. It also appears to have an anti-competitive effect in the broadcasting industry.

No opposition to repeal the Lea Act has been voiced to our Committee.

The Committee feels that this change to the Communications Act is long overdue.

COMMITTEE HEARINGS

The Subcommittee on Communications held hearings on the deletion of the Lea Act during its considerations of H.R. 13015 in the 95th Congress and H.R. 3333 during the 1st session of the 96th Congress.

COMMITTEE ACTION

The Committee met in open markup session on September 24, 1980, to consider H.R. 4892 and ordered the bill reported by a unanimous voice vote while a majority of the Committee were present.

SENATE ACTION

The Senate has held no hearings on H.R. 4892.

SECTION-BY-SECTION ANALYSIS

Section 1 would amend Title V of the Act by striking out section 506. Section 2 would redesignate section 507 through section 509 as section 506 through section 508, respectively.

OVERSIGHT FINDINGS

There are no formal oversight findings by the Committee pursuant to clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives.

No oversight findings have been submitted to the Committee by the Committee on Government Operations pursuant to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee makes the following statement regarding the inflationary impact of the reported bill:

The Committee is unaware that any inflationary impact on the economy will result from the passage of H.R. 4892.

COST ESTIMATE

Pursuant to clause 7 of rule XIII of the Rules of the House of Representatives, the Committee makes the following statement relative to the cost of the legislation:

The Committee is not aware of any costs that will result from this bill.

In regard to clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee includes the following cost estimate submitted by the Congressional Budget Officer relative to provisions of H.R. 4892:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 24, 1980.

HON. HARLEY O. STAGGERS,
*Chairman, Committee on Interstate and Foreign Commerce, U.S.
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 4892, a bill to repeal section 506 of the Communications Act of 1934, as ordered reported by the House Committee on Interstate and Foreign Commerce, September 24, 1980.

The effect of this repeal is to make federal labor practices concerning musicians consistent with existing labor laws. It is expected that no additional cost to the government would be incurred as a result of enactment of this bill.

Sincerely,

ROBERT D. REISCHAUER
(For Alice M. Rivlin, Director).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman) :

COMMUNICATIONS ACT OF 1934

TITLE III—PROVISIONS RELATING TO RADIO

PART I—GENERAL PROVISIONS

* * * * * *

ANNOUNCEMENT WITH RESPECT TO CERTAIN MATTER BROADCAST

SEC. 317. (a) (1) * * *

(b) In any case where a report has been made to a radio station, as required by section [508] 507 of this Act, of circumstances which would have required an announcement under this section had the consideration been received by such radio station, an appropriate announcement shall be made by such radio station.

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TITLE V—PENAL PROVISIONS—FORFEITURES

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SEC. 503. (a) * * *

(b) Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this subsection, to have—

(A) willfully or repeatedly failed to comply substantially with the terms and conditions of any license, permit, certificate, or other instrument or authorization issued by the Commission;

(B) willfully or repeatedly failed to comply with any of the provisions of this Act or of any rule, regulation, or order issued by the Commission under this Act or under any treaty convention, or other agreement to which the United States is a party and which is binding upon the United States;

(C) violated any provision of section 317(c) or [509] 508 (a) of this Act; or

(D) violated any provision of section 1304, 1343, or 1464 of title 18, United States Code;

shall be liable to the United States for a forfeiture penalty. A forfeiture penalty under this subsection shall be in addition to any other penalty provided for by this Act; except that this subsection shall not apply to any conduct which is subject to forfeiture under title II, part II or III of title III, or section [507] 506 of this Act.

* * * * *

PROVISIONS RELATING TO FORFEITURE

SEC. 504. (a) * * *

(b) The forfeitures imposed by title II, parts II and III of title III, and sections 503(b) and [507] 506 of this Act shall be subject to remission or mitigation by the Commission, under such regulations and methods of ascertaining the facts as may seem to it advisable, and, if suit has been instituted, the Attorney General, upon request of the Commission, shall direct the discontinuance of any prosecution to recover such forfeitures: *Provided, however,* That no forfeiture shall be remitted or mitigated after determination by a court of competent jurisdiction.

* * * * *

[COERCIVE PRACTICES AFFECTING BROADCASTING

[SEC. 506. (a) It shall be unlawful, by the use or express or implied threat of the use of force, violence, intimidation, or duress, or by the use or express or implied threat of the use of other means, to coerce, compel or constrain or attempt to coerce, compel, or constrain a licensee—

[(1) to employ or agree to employ, in connection with the conduct of the broadcasting business of such licensee, any person or persons in excess of the number of employees needed by such licensee to perform actual services; or

[(2) to pay or give or agree to pay or give any money or other thing of value in lieu of giving, or on account of failure to give, employment to any person or persons, in connection with the conduct of the broadcasting business of such licensee, in excess of the number of employees needed by such licensee to perform actual services; or

[(3) to pay or agree to pay more than once for services performed in connection with the conduct of the broadcasting business of such licensee; or

[(4) to pay or give or agree to pay or give any money or other thing of value for services, in connection with the conduct of the broadcasting business of such licensee, which are not to be performed; or

[(5) to refrain, or agree to refrain, from broadcasting or from permitting the broadcasting of a noncommercial educational or cultural

program in connection with which the participants receive no money or other thing of value for their services, other than their actual expenses, and such licensee neither pays nor gives any money or other thing of value for the privilege of broadcasting such program nor receives any money or other thing of value on account of the broadcasting of such program; or

【(6) to refrain, or agree to refrain, from broadcasting or permitting the broadcasting of any radio communication originating outside the United States.

【(b) It shall be unlawful, by the use or express or implied threat of the use of force, violence, intimidation or duress, or by the use or express or implied threat of the use of other means, to coerce, compel or constrain or attempt to coerce, compel or constrain a licensee or any other person—

【(1) to pay or agree to pay any exaction for the privilege of, or on account of, producing, preparing, manufacturing, selling, buying, renting, operating, using, or maintaining recording transcriptions, or mechanical, chemical, or electrical reproductions, or any other articles, equipment, machines, or materials, used or intended to be used in broadcasting or in the production, preparation, performance, or presentation of a program or programs for broadcasting; or

【(2) to accede to or impose any restriction upon such production, preparation, manufacture, sale, purchase, rental, operation, use or maintenance, if such restriction is for the purpose of preventing or limiting the use of such articles, equipment, machines, or materials in broadcasting or in the production, preparation, performance, or presentation of a program or programs for broadcasting; or

【(3) to pay or agree to pay any exaction on account of the broadcasting, by means of recordings or transcriptions, of a program previously broadcast, payment having been made, or agreed to be made, for the services actually rendered in the performance of such program.

【(c) The provisions of subsection (a) or (b) of this section shall not be held to make unlawful the enforcement or attempted enforcement, by means lawfully employed, of any contract right heretofore or hereafter existing or of any legal obligation heretofore or hereafter incurred or assumed.

【(d) Whoever willfully violates any provision of subsection (a) or (b) of this section shall, upon conviction thereof, be punished by imprisonment for not more than one year or by a fine of not more than 1,000, or both.

【(e) As used in this section the term "licensee" includes the owner or owners, and the person or persons having control or management of the radio station in respect of which a station license was granted.】

VIOLATION OF GREAT LAKES AGREEMENT

SEC. 【507.】506. (a) Any vessel of the United States that is navigated in violation of the provisions of the Great Lakes Agreement or rules and regulations of the Commission made in pursuance thereof and any vessel of a foreign country that is so navigated on waters under the jurisdiction of the United States shall forfeit to the United States the sum of \$500 recoverable by way of suit or libel. Each

day during which such navigation occurs shall constitute a separate offense.

(b) Every willful failure on the part of the master of a vessel of the United States to enforce or to comply with the provisions of the Great Lakes Agreement or the rules and regulations of the Commission made in pursuance thereof shall cause him to forfeit to the United States the sum of \$100.

DISCLOSURE OF CERTAIN PAYMENTS

SEC. [508.]507. (a) Subject to subsection (d), any employee of a radio station who accepts or agrees to accept from any person (other than such station), or any person (other than such station) who pays or agrees to pay such employee, any money, service or other valuable consideration for the broadcast of any matter over such station shall, in advance of such broadcast, disclose the fact of such acceptance or agreement to such station.

(b) Subject to subsection (d), any person who, in connection with the production or preparation of any program or program matter which is intended for broadcasting over any radio station, accepts or agrees to accept, or pays or agrees to pay, any money, service or other valuable consideration for the inclusion of any matter as a part of such program or program matter, shall, in advance of such broadcast, disclose the fact of such acceptance or payment or agreement to the payee's employer, or to the person for whom such program or program matter is being produced, or to the licensee of such station over which such program is broadcast.

(c) Subject to subsection (d), any person who supplies to any other person any program or program matter which is intended for broadcasting over any radio station shall, in advance of such broadcast, disclose to such other person any information of which he has knowledge, or which has been disclosed to him, as to any money, service or other valuable consideration which any person has paid or accepted, or has agreed to pay or accept, for the inclusion of any matter as a part of such program or program matter.

(d) The provisions of this section requiring the disclosure of information shall not apply in any case where, because of a waiver made by the Commission under section 317(d), an announcement is not required to be made under section 317.

(e) The inclusion in the program of the announcement required by section 317 shall constitute the disclosure required by this section.

(f) The term "service or other valuable consideration" as used in this section shall not include any service or property furnished without charge or at a nominal charge for use on, or in connection with, a broadcast, or for use on a program which is intended for broadcasting over any radio station, unless it is so furnished in consideration for an identification in such broadcast or in such program of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property in such broadcast or such program.

(g) Any person who violates any provision of this section shall, for each such violation, be fined not more than \$10,000 or imprisoned for not more than one year, or both.

PROHIBITED PRACTICES IN CASE OF CONTESTS OF INTELLECTUAL
KNOWLEDGE, INTELLECTUAL SKILL, OR CHANGE

SEC. [509.]508. (a) It shall be unlawful for any person, with intent to deceive the listening or viewing public—

(1) To supply to any contestant in a purportedly bona fide contest of intellectual knowledge or intellectual skill any special and secret assistance whereby the outcome of such contest will be in whole or in part prearranged or predetermined.

(2) By means of persuasion, bribery, intimidation, or otherwise, to induce or cause any contestant in a purportedly bona fide contest of intellectual knowledge or intellectual skill to refrain in any manner from using or displaying his knowledge or skill in such contest, whereby the outcome thereof will be in whole or in part prearranged or predetermined.

(3) To engage in any artifice or scheme for the purpose of prearranging or predetermining in whole or in part the outcome of a purportedly bona fide contest of intellectual knowledge, intellectual skill, or chance.

(4) To produce or participate in the production for broadcasting of, to broadcast or participate in the broadcasting of, to offer to a licensee for broadcasting, or to sponsor, any radio program, knowing or having reasonable ground for believing that, in connection with a purportedly bona fide contest of intellectual knowledge, intellectual skill, or chance constituting any part of such program, any person has done or is going to do any act or thing referred to in paragraph (1), (2), or (3) of this subsection.

(5) To conspire with any other person or persons to do any act or thing prohibited by paragraph (1), (2), (3), or (4) of this subsection, if one or more of such persons do any act to effect the object of such conspiracy.

(b) for the purpose of this section—

(1) The term "contest" means any contest broadcast by a radio station in connection with which any money or any other thing of value is offered as a prize or prizes to be paid or presented by the program sponsor or by any other person or persons, as announced in the course of the broadcast.

(2) The term "the listening or viewing public" means those members of the public who, with the aid of radio receiving sets, listen to or view programs broadcast by radio stations.

(c) Whoever violates subsection (a) shall be fined not more than \$10,000 or imprisoned not more than one year, or both.

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AGENCY VIEWS

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., October 30, 1979.

HON. HARLEY O. STAGGERS,
*Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for comment on H.R. 4892, a bill to repeal § 506 of the Communications Act

of 1934, as amended. Although the Federal Communications Commission has not had the opportunity to consider this proposal collectively, I am glad to forward the preliminary views of this Office for your consideration.

Section 506 of the Communications Act, or the Lea Act as it is sometimes known, was passed in 1946 to protect broadcasters from certain coercive union employment demands which were common to the radio broadcast industry at that time. According to the House Report on the Lea amendment, these included demands that broadcasters employ persons in excess of the number wanted; that in lieu of failure to employ such persons the broadcaster should pay to the musicians' federation sums of money equivalent to or greater than funds required for the employment of members of the federation; that payments for services already performed and fully paid for should be repeated; that dual orchestras should be employed for a single broadcast over two or more outlets; and that the use of voluntary non-compensated orchestras be barred from broadcasts unless an orchestra of the Federation of Musicians was also employed or that the union were paid an equivalent or greater amount than the regular charge for a federation orchestra.

The Lea Act attempted to deal with such featherbedding demands by making it unlawful for anyone to use or threaten to use force, intimidation, or duress to coerce, compel, or constrain a licensee to accede to demands (1) to hire employees or pay for services which the licensee did not need, or (2) to refrain from broadcasting non-commercial or internationally-originated programming.

As the Justice Department has indicated, there have been only four criminal investigations under the statute in the last five years, with prosecution being denied in each instance. At the FCC, we have found no records of any action under Section 506 since its passage in 1946.

While we cannot point to instances in which Section 506 was necessary to prevent coercive employment demands which could not otherwise have been restrained under other existing statutes, we do not feel justified in stating that Section 506 is no longer necessary today as a deterrent to the kinds of coercive employment demands which plagued the broadcast industry in the 1940's. While the FCC's current policy is to support the elimination of outdated or unnecessary regulation, in this case the fact of the matter is that there appears to have been a direct correlation between the decline of featherbedding demands against broadcasters by the professional musicians' union, and the passage of the Lea Act by Congress in 1946. We can give you no assurances that some of the coercive practices in question, or some modern variations of them, would not return in the event that Section 506 were repealed.

Under the circumstances, I believe that the burden should be with the musicians' union and the other supporters of H.R. 4892, to demonstrate that Section 506 of the Communications Act now bars them from otherwise legitimate and desirable forms of personal and economic expression. In my view, any relaxation of Section 506 should be tailored to meet the demonstrated need of the musicians for greater freedom of expression.

Attached is a copy of a recent letter from FCC Chairman Charles D. Ferris to Senator Warren G. Magnuson concerning the Lea Act. I hope these comments will be of use to you in evaluating the subject bill.

Sincerely,

ROBERT R. BRUCE, *General Counsel.*

Enclosure.

JANUARY 16, 1978.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Appropriations,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: On November 3, 1978, you forwarded to us a letter from Ms. Jeann A. Campbell. In that letter, Ms. Campbell urged repeal of the Lea Act, which is Section 506 of the Communications Act of 1934. A copy of Section 506 is attached for your review. Although Ms. Campbell did not write in support of a particular piece of legislation, there were two bills, S. 2581, introduced by Senator Jennings Randolph, and H.R. 7926, introduced by Representative John Slack in the last Congress, to accomplish this repeal. There were no hearings held in either case, and the bills died with the adjournment of the 95th Congress.

The Lea Act was passed April 16, 1946, as an amendment to the Communications Act of 1934. As you can see from the attached copy of Section 506, the intent of the Lea Act was to bar coercive practices affecting broadcasters by making it unlawful for anyone to use or threaten to use force, intimidation, or duress "to coerce, compel, or constrain a licensee" to accede to demands (1) to hire employees or pay for services which the licensee did not need, or (2) to refrain from broadcasting non-commercial or internationally originated programming.

The American Federation of Musicians, which is the professional musicians' union, has opposed this provision from the start.

House Subcommittee on Communications Chairman Lionel Van Deerlin has taken the position that the Lea Act is a labor law provision, and labor law does not belong in a communications act.

Consistent with this statement, Mr. Van Deerlin omitted any Lea Act provisions from H.R. 13015, which he introduced in the last Congress. The Commission has not taken any position with respect to its repeal.

We hope that this information will be helpful to you in advising your constituent. If we can be of further assistance, please let me know.

Sincerely yours,

CHARLES D. FERRIS, *Chairman.*